mental loss, as there is in a case where one insures his means of subsistence; and without such advantage the dangerous tendencies which must occasionally bring evil results seem sufficient to invalidate the policy. *Life Ins. Clearing Co.* v. *O'Neill, supra. Contra, Woods* v. *Woods' Adm'r*, 130 Ky. 162, 113 S. W. 79. See cases collected in RICHARDS, INSURANCE LAW, 3 ed., § 35; 1 MAY, INSURANCE, 4 ed., § 102 A–107 C.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — CONFLICT BETWEEN FEDERAL AND STATE POLICE REGULATIONS: SAFETY APPLIANCE LAWS. — A state statute required all locomotives used in the state to comply with certain specifications tending to promote the safety of travel, and for an elaborate system of inspection to enforce compliance. A subsequent federal statute embodied similar provisions for interstate locomotives, and differed only in details the enforcement of which would not render impossible enforcement of the state statute. *Held*, that the state statute is now invalid as to interstate commerce. *Louisville & Nashville R. Co.* v. *Hughes*, 201 Fed. 727 (Dist. Ct., S. D. Oh.).

The state statute was admittedly valid, when passed, as an exercise of police power in the absence of federal regulation. But the law seems to be that a federal statute which shows an intent to exclude all state police regulation of interstate commerce in a given field is effective in so doing, even though the state regulations are not inconsistent with those of Congress. *Northern Pacific Ry. Co.* v. *Washington*, 222 U. S. 370, 32 Sup. Ct. 160. In the principal case the intent of Congress to control completely one field of interstate commerce is made plain by the elaborateness of the federal statute. Moreover, although the two statutes could have been enforced simultaneously, the expense involved prohibits it as a matter of business expediency, and they should be held to be in direct conflict. See 26 HARV. L. REV. 78.

INTERSTATE COMMERCE — CONTROL BY STATES — CONFLICT BETWEEN FEDERAL AND STATE POLICE REGULATIONS: Pure Food Laws. — A state statute provided that a certain compound should not be sold under the label of "syrup." The defendants, retail merchants, were convicted under this statute. The goods in question were bought in another state and the label and package were unaltered. The label "syrup" was a proper one under the federal Pure Food Act, applying to goods in interstate commerce. *Held*, that the state statute is invalid as interfering with the operation of the federal Pure Food Act. *McDermott* v. *State of Wisconsin*, 33 Sup. Ct. 431.

For a discussion of the principles involved see 26 HARV. L. REV. 78.

INTERSTATE COMMERCE — INTERSTATE COMMERCE COMMISSION — POWER TO ORDER EQUALIZATION OF INTRASTATE RATES WITH INTERSTATE RATES. — A state railroad commission fixed intrastate rates so low as to prevent commercial competition within the state by distributing centers just across the state line which had to ship under the reasonable interstate rates. The railroad acquiesced. The Interstate Commerce Commission ordered the railroad to equalize its interstate and intrastate rates in that section. *Held*, that Congress has the constitutional power to do this, and it has delegated that power to the Interstate Commerce Commission. *Texas & Pacific Ry. Co.* v. *United States*, U. S. Commerce Ct., April 25, 1913.

The court permitted the order because the state rates could be resisted by the railroad on the ground that they were unconstitutional in interfering with interstate commerce. The case thus presents a similar question to that involved in the State Railroad Rate Cases now before the Supreme Court. See *Shepard* v. *Northern Pacific Ry. Co.*, 184 Fed. 765; *St. Louis & S. F. Ry. Co.* v. *Hadley*, 168 Fed. 317. In deciding that the discriminatory intra-

state rates were void when Congress through the Interstate Commerce Commission had acted on the matter, the court did not expressly decide that those rates were unconstitutional without such regulation. But if the Interstate Commerce Act gives to the Commission the power to vary such rates this would seem to be such action by Congress as would exclude any state regulation previously permissible.

LANDLORD AND TENANT — RENT — CONSTRUCTIVE EVICTION AS DEFENSE TO ACTION FOR RENT. — The lessee of an apartment left before the end of the term because the stench from dead rats in the walls made the place untenantable. In an action for rent for the remainder of the term, he pleaded these facts as amounting to a constructive eviction. *Held*, that this plea is a good defense. *Barnard Realty Co.* v. *Bonwit*, 139 N. Y. Supp. 1050 (Sup. Ct., App. Div.).

It is well settled that eviction discharges the duty to pay rent. *Sully* v. *Schmitt*, 147 N. Y. 248, 41 N. E. 514; *Bass* v. *Rollins*, 63 Minn. 226, 65 N. W. 348. But the cases seem confused as to what facts may constitute an eviction. Some courts have held that a breach of covenant by the landlord causing the premises to become untenantable and the tenant to leave, will be sufficient. *Bass* v. *Rollins*, *supra*; *Lawrence* v. *Mycenian Marble Co.*, 1 N. Y. Misc. 105, 20 N. Y. Supp. 698. *Contra*, *Lunn* v. *Gage*, 37 Ill. 19. By others, however, it has been said that the tenant must leave because of affirmative acts by the landlord. See TIFFANY, LANDLORD AND TENANT, 1271; *Huber* v. *Ryan*, 26 N. Y. Misc. 428, 56 N. Y. Supp. 135. The better view would seem to be that if the landlord is under any duty in regard to the leased premises, the violation of which amounts to a tort, and a breach of this duty makes the premises untenantable, there will be an eviction. *Alger* v. *Kennedy*, 49 Vt. 109; *Sully* v. *Schmitt*, *supra*. Without express provision otherwise the lessor of a house need make no repairs. *Daly* v. *Wise*, 132 N. Y. 306, 30 N. E. 837; *Libbey* v. *Tolford*, 48 Me. 316. But when an apartment is leased, the view of the court in the principal case, that the space outside the inner walls is not included in the leasehold, seems reasonable, as the tenant cannot be considered as absolutely in control of all surrounding walls. It seems proper, therefore, that the duty to prevent rats within such walls from injuring the value of the leasehold should fall on the landlord; and his failure to repair resulting in a nuisance making the premises untenantable, should constitute a tort amounting to an eviction. *Maddon* v. *Bullock*, 115 N. Y. Supp. 723.

LEGACIES AND DEVISES — ABATEMENT — LEGACY CONDITIONED ON RELINQUISHMENT OF CLAIMS AGAINST THIRD PARTIES. — The defendant was entitled to an annuity for life in a trust fund. The testator bequeathed money to the defendant on condition that she relinquish all such rights in favor of a charitable organization. The estate proved insufficient to satisfy all the general legacies. *Held*, that if she elects to take the legacy it is liable to abatement. *Whitehead* v. *Street*, Weekly Notes of Feb. 15, 1913, 40 (Eng., Ch. Div., 1913).

The usual rule is that, in the absence of funds to satisfy the general legacies, they all abate together, even though the widow is among such legatees and is otherwise unprovided for. *Blower* v. *Morrett*, 2 Ves. 419; *In re Schmeder's Estate*, [1891] 3 Ch. 44. *Contra*, *In re Hardy*, 17 Ch. D. 798. Courts and textwriters have repeatedly declared that wherever a legacy is given in lieu of dower or relinquishment of a claim, there is priority. See *Davies* v. *Bush*, Younge 341, 343; *Zaiser* v. *Lawley*, [1902] 2 Ch. 799, 807; THEOBALD ON WILLS, 6 ed., 810; WILLIAMS ON EXECUTORS, 10 ed., 1093. Such has been the law for over two hundred years as to legacies in lieu of dower. *Burridge* v. *Bradyl*, 1 P. Wms. 127. But in England there seems to be no direct authority allowing priority to the legatee where other claims are given up. See